Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-965

THE PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,

vs.

WALTER YOUNG,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF MICHIGAN

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Now Comes William L. Cahalan, Prosecuting Attorney in and for the County of Wayne, State of Michigan, by Edward Reilly Wilson, Chief Appellate Attorney; and Don W. Atkins, Assistant Prosecuting Attorney and prays that a Writ of Certiorari issue to review the order of the Supreme Court of the State of Michigan, entered in the above-entiteld cause on September 28, 1979.

OPINION AND ORDER BELOW

The Opinion of the Michigan Court of Appeals is reported at 89 Mich App 753; 282 NW2d 211 (1979), and is appended as Appendix "A". The Order of the Michigan Supreme Court is reported at 407 Mich 877 (1979), and is appended as Appendix "B".

STATEMENT OF JURISDICTION

The judgment of the Michigan Court of Appeals was entered on May 1, 1979. The order of the Michigan Supreme Court was entered on September 28, 1979. The jurisdiction of this Court is invoked under 28 USC § 1257(3).

QUESTIONS PRESENTED

I.

Did the arresting officer have probable cause to seize and to examine a tin-foil packet which the respondent removed from his pocket and dropped to the floor of the car?

II.

Assuming that probable cause did not exist, should the officer's conduct and the resulting seizure of evidence fall within the "exclusionary rule" as violative of the Fourth and Fourteenth Amendments to the United States Constitution?

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF FACTS

In the early morning hours of September 2, 1977 police officers were on routine patrol in a marked scout car in an area of Detroit where it had just rained slightly. The officers stopped to investigate a car parked near an intersection in which two people appeared to be sleeping in the front seat. The passenger door was wide open and the inside dome light was functioning. Having stopped the scout car next to the vehicle, the arresting officer who was in uniform approached the passenger door. As he did so, he saw

both individuals rouse themselves and heard one of them say something. The officer then saw the respondent, Walter Young, remove a tin-foil packet from his pocket and throw it to the floor of the car. Having seen such packets in the past and due to his experience as a police officer, he knew that they were a common means of transporting and dispensing narcotics. Upon seizing the packet, the officer looked inside. Seeing that it contained an off-white powdery substance (which later proved to be heroin), the defendant was then arrested for violating the state "controlled substances act"; specifically, possession of heroin.

Prior to trial, the defendant brought a motion to quash the information on the gounds that the evidence was the product of an illegal search and seizure. While tending to agree that the arresting officer was in a position where he had a right to be to observe the packet, the trial court dismissed the case on the grounds that despite the officer's prior experience and knowledge in the methods of packaging narcotics seeing such a packet did not supply probable cause to arrest.

Two of the three members of a Michigan Court of Appeals panel refused to find that the trial court was "clearly erroneous" in that while the officer was in a place he had a right to be when he saw the tin-foil packet what he observed did not "constitute probable cause to believe that the object seized was evidence or an implement of crime" and that any "inference of criminal activity derived from (the) mere possession (of a tin-foil packet) is too expansive for purposes of the Fourth Amendment." People v Young, 89 Mich App 753; 282 NW2d 211 (1979).

By Order dated September 28, 1979, the Michigan Supreme Court denied Petitioner's application for leave to appeal. Petitioner now seeks a writ of certiorari to review the Order of the Michigan Supreme Court.

REASONS FOR GRANTING THE WRIT

I.

The arresting officer had probable cause to seize a tin-foil packet which the respondent removed from his pocket and dropped to the floor of the car and to examine it.

It has long been settled that ". . . objects falling within the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence." Harris v United States, 390 US 234, 236; 88 S Ct 992, 993; 19 L Ed 2d 1067, 1069 (1968). The officer herein was clearly where he had a right to be when he sighted the tin-foil packet. First, he was on a public sidewalk or street. Second, under the circumstances (seeing two men "sleeping" in a parked car on a Detroit Street at 1:30 a.m., with the passenger door wide open and the dome light on), he had not only a right but a duty to investigate and see if the occupants were sleeping, unconscious or dead. As he approached the car, the respondent roused himself, took what the officer observed to be a tin-foil packet from his pocket and threw it on the floor of the car. The officer testified that in his past experience as a police officer such packets are used to transport narcotics. The officer reached in, picked up the packet, opened it, observed it to contain an off-white powdery substance, and arrested the respondent. It is the petitioner's contention that the officer's limited intrusion — i.e. picking up the packet and opening it — was reasonable under the Fourth Amendment to the United States Constitution.

Nevertheless, the court below refused to recognize the proposition that the sighting of a tin-foil packet, even in light of other facts known to the officer, supplied the necessary probable cause.

Analyzing the instant case by asking whether the officer possessed such information as would lead a reasonably discreet and prudent man to believe that a felony had been or was being committed, keeping in mind "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act" Draper v United States, 358 US 307; 79 S Ct 329; 3 L Ed 2d 327 (1959), the petitioner submits that the answer must be that probable cause did exist.

Also vitally important is the experience which an officer possesses with respect to the illicit drug trade. This was graphically illustrated in People v Ridgeway, 74 Mich App 306, 314; 253 NW2d 743 (1977); lv den 401 Mich 381 (1977):

> We now consider the strongest support for a finding of probable cause, viz, the officer's knowledge that tinfoil packets like the one on the floor of the car often contain narcotics. Given the officer's experience in narcotics law enforcement, his suspicion that the packet contained some controlled substance must be respected. The question is extremely close, but we believe that the officer did have probable cause to believe that the packet contained a controlled substance.
>
> Given that the seizure and search were proper, the officer obviously had probable cause to make a warrantless arrest for possession of a controlled substance. (Emphasis added)

As the Court in People v Hunter, 72 Mich App 191, 199; 249 NW2d 351, 355 (1976) observed:

> . . . while seized objects which are linked to a crime only after further investigation do not fall within the plain view doctrine, People v White, 46 Mich App 195; 207 NW2d 921 (1973), a police officer need not recognize an object as evidence of a crime beyond a reasonable doubt in order to seize it under the plain view doctrine. The officer need only have probable cause to believe that the object is connected with a crime. United States v Williams, 385 F. Supp 1400 (ED Mich, 1974).

In summary, it is the petitioner's position that the social meaning of the infamous "tin-foil packet" has evolved to the point where the lawful sighting of such by a trained urban policeman in itself supplies "probable cause to believe that the packet contained evidence of a crime." Lastly, the combination of the "tin-foil packet," furtive gesture, and the exigent circumstances of a potentially mobile vehicle, supplied probable cause for the limited intrusion and seizure in the case at bar.

II.

> Assuming that probable cause did not exist, the officer's conduct and the resulting seizure of evidence should not fall within the "exclusionary rule" as violative of the Fourth and Fourteenth Amendments to the United States Constitution.

Since its inception in United States v Weeks, 232 US 383; 34 St Ct 341; 58 L Ed 652 (1914), the so-called "exclusionary rule", a creature of judicial invention, has met with increasing opposition. Though Wolf v Colorado, 338 US 25; 69 S Ct 1359; 93 L Ed 1782 (1949) which held that the Fourth Amendment was applicable to the states by incorporation through the Fourteenth Amendment and Mapp v Ohio, 367 US 643; 81 S Ct 1684;

6 L Ed 2d 1081 (1961) which held that adherence to the "exclusionary rule" by the states was mandatory since it was incorporated in the Fourteenth Amendment, the rule has resulted in the mechanical exclusion of the most relevant and competent evidence without any consideration of the reasonableness of the police officer's conduct or the degree of intrusion. That the blind application of the rule may in fact deter police from enforcing the law which they are sworn to uphold and require them to make judgments as to the existence of probable cause upon which even jurists may differ was graphically illustrated by Mr. Justice White in his dissenting opinion in Stone v Powell, 428 US 465; 96 S Ct 3037; 49 L Ed 2d 1067 (1976):

> . . . excluding the evidence will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that in each of them the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty. It is true that in such cases the courts have ultimately determined that in their view the officer was mistaken; but it is also true that in making constitutional judgments under the general language used in some parts of our Constitution, including the Fourth Amendment, there is much room for disagreement among judges each of whom is convinced that both he and his colleagues are reasonable men. Surely when this Court divides five to four on issues of probable cause, it is not tenable to conclude that the officer was at fault or acted unreasonable in making the arrest.
>
> When law enforcement personnel have acted mistakenly, but in good faith and on

> reasonable grounds, and yet the evidence they have seized is later excluded, the exclusion can have no deterrent effect. The officers, if they do their duty, will act in similar fashion in similar circumstances in the future; and the only consequence of the rule as presently administered is that unimpeachable and probative evidence is kept from the trier of fact and the truth-finding function of proceedings is substantially impaired or a trial totally aborted. 428 US 465 at 539-540.

That trial and appellate court judges may render inconsistent opinions on the issue of probable cause (as occurred in the case at bar) and that the state of the law may change or be modified militate against the continued and unbriddled application of the "exclusionary rule". That the need to reconsider the continued viability of the rule was aptly stated by Mr. Justice Rehnquist in his dissent from the denial of stay in California v Minjares, ___ US ___; 100 S Ct 9, 14-15; ___ L Ed 2d ___ (1979):

> Of course, the "primary" justification for exclusionary rule is the need for deterrence of illegal police conduct. See Stone v. Powell, 428 U.S. at 486. But since Mapp, various changes in circumstances make redress more easily obtainable by a defendant whose constitutional rights have been violated.
>
> * * *
>
> The reasons for applying the exclusionary rule in the criminal trial, as opposed to giving the individual criminal defendant redress in some other forum quite apart from the question whether he is guilty

or not of the criminal charges, are substantially weaker today than they were either in 1949, when Wolf v. Colorado was decided, or in 1961, when Mapp v. Ohio was decided. Given these changes, I would grant the stay and request the parties and the Solicitor General to brief the question of whether, and to what extent, the so-called "exclusionary rule" of Weeks v. United States, supra, should be retained.

CONCLUSION

Wherefore, petitioner submits that the Michigan Supreme Court has misconstrued decisions of the Court, resulting in a substantial federal question such that plenary review should be granted.

Respectfully submitted,

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DWA/do
Dated: November 30, 1979.

APPENDIX A

OPINION OF THE MICHIGAN COURT OF APPEALS,

(People of the State of Michigan v Walter Young)

(No. 77-4852

Before: D.C. Riley, P.J., J.H. Gillis and B.B. MacKenzie, JJ.

DOROTHY COMSTOCK RILEY, P.J.

Defendant was arrested on September 2, 1977 and charged with possession of heroin in violation of MCL 335.341(4)(a); MSA 18.1070(41)(4)(a). The undisputed facts show that on the evening in question, police officers stopped to investigate a parked car which appeared to contain two sleeping men. The vehicle's passenger door was open and the inside dome light was functioning. As the police approached the men roused themselves, at which time defendant removed a tin foil packet from his pocket and dropped it to the floor of the automobile. One of the officers, familiar with the use of such packets as a method of drug dispersal, seized and opened the packet, which contained an off-white powdery substance later determined to be heroin. Defendant was immediately arrested and taken into custody.

Following the preliminary examination, defendant brought a motion to quash the information and dismiss the case on the grounds that the police officer lacked sufficient probable cause to confiscate and open the tin foil packet. The trial court granted this motion and the People appeal as of right.

Initially, we observe that the expropriation of the packet cannot be sustained by reference to the "plain

view" doctrine, which holds that the seizure of objects within the plain view of a police officer, in a place where he has a lawful right to be, is not constitutionally proscribed for lack of a valid warrant. People v Hunter, 72 Mich App 191, 199; 249 NW2d 351 (1976), People v Triplett, 68 Mich App 531; 243 NW2d 665 (1976), lv den, 397 Mich 842 (1976). However, this exception is subject to the further limitation that only objects which the officer has probable cause to believe are evidence or implements of a crime may be seized and examined. People v Ridgeway, 74 Mich App 306, 311-312; 253 NW2d 743 (1977), lv den, 401 Mich 831 (1977).

Here there is no dispute that, under the circumstances at bar, the officers' investigation of the vehicle was proper. The occupants of the automobile could have been in need of assistance for any of a number of reasons. Hence, the crucial question thus becomes not whether the officer was lawfully in a place to observe, but rather, did what he observe constitute probable cause to believe that the object seized was evidence or an implement of crime.

At this juncture we reach plaintiff's contention that probable cause is no longer required for a limited search and seizure of the kind conducted by the police in this case, but that such an investigation may be premised upon a lesser standard of "reasonable grounds" It argues, erroneously, that the facts of Terry v Ohio, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968) and United States v Martinez-Fuerte, 428 US 364; 96 S Ct 3092; 49 L Ed 2d 1000 (1976) indicate that, consistent with the Fourth Amendment, the police may , in cases such as this, conduct limited investigatory searches and seizures based upon grounds less than probable cause in the absence of any individualized suspicion. Terry involved the validity of a surface search or "frisk" of the outer clothing of a defendant with whom the officer had contact where the officer reasonably believed that he was dealing with an armed and dangerous person. In authorizing a limited intrusion to search for weapons,

the holding in Terry was specifically premised upon, and limited to, the concern for the safety of law enforcement agents. Here it cannot be argued that any solicitude for the officers' safety because of hidden weapons could justify opening the packet.

United States v Martinez-Fuerte, supra, is also wholly inapposite as it deals with the dramatically different conditions relevant to a border search where a more relaxed Fourth Amendment standard has been held to apply. Nor does a review of the case law and remaining authority cited by plaintiff warrant imposition of a lesser standard than probable cause in the present case.

Next, the State broadly urges us to hold that the time has come (in the evolution of the law) for the courts to realize that the use of tin foil packets to facilitate drug trade is so widespread and well known among policemen that the mere sighting of such packets is sufficient to establish the requisite probable cause. We decline such a historical invitation. Defendant correctly points out that tin and aluminum foil have a vast number of legitimate and common uses; these commodities permeate American society resulting in almost daily contact with them in one form or another. Any inference of criminal activity derived from their mere possession is too expansive for purposes of the Fourth Amendment.

We acknowledge that this Court has previously used language ostensibly favoring the People's position. In People v Ridgeway, supra, at 314, where a police officer observed a tin foil packet on the floor of defendant's car, the Court stated:

"We now consider the strongest support for a finding of probable cause, viz., the officer's knowledge that tin-foil packets like the one on the floor of the car often contain narcotics. Given the officer's experience

in narcotics law enforcement, his suspicion that the packet contained some controlled substance must be respected. The question is extremely close, but we believe that the officer did have probable cause to believe that the packet contained a controlled substance."

However, in that case the officer also detected the odor of marijuana when defendant was stopped. The inference that marijuana users would be in possession of narcotics may be entitled to some weight according to the Court. The additional circumstance of marijuana smoke in Ridgeway renders it inadequate precedent for plaintiff's position. See also People v Falconer, 76 Mich App 367, 369; 256 NW2d 597 (1977), lv den, 402 Mich 816 (1977), holding that a police officer's suspicion that manila coin envelopes, being exchanged by a defendant for money, contained narcotics, did not by itself constitute probable cause for either arrest of the defendant or a search of the defendant's car.

Lastly, the People contend that the additional circumstances present in this case, taken in combination, are sufficient to establish probable cause, to wit: the officer's prior experience with tin foil packets, defendant's furtive gesture, and the exigent circumstances of a potentially mobile vehicle. The latter ground merits only brief discussion. The exigent circumstances allowing immediate search of a movable vehicle is an exception to the Fourth Amendment's warrant requirement. It does not serve to discharge the antecedent necessity of probable cause. Only where there is probable cause to believe that contraband will be found at the time the search occurs will the exception catalyze permissible investigation of the auto's contents without the procurement of a warrant. People v Strong, 77 Mich App 281, 284-285; 258 NW2d 205 (1977), People v Daniels, 50 Mich App 754, 758; 213 NW2d 780 (1973), lv den, 391 Mich 828 (1974). See generally, 1 Wharton, Criminal Procedure (12th ed), § 151, p 321.

The remaining facts, however, are more troubling. Although insufficient standing alone, the use of tin foil packets may be considered in combination with other elements in determining the existence of probable cause. One such factor is an evasive or "furtive" gesture by one aware that he is under police observation. As in the case of tin foil packets a mere furtive gesture, standing alone, does not create probable cause to search a vehicle. People v Howell, 394 Mich 445, 447; 231 NW2d 650 (1975), People v Boudah, 61 Mich App 563, 566; 233 NW2d 84 (1975), People v Obadele, 58 Mich App 139, 143; 227 NW2d 258 (1975), People v Nelson Pitts, 40 Mich App 567, 576; 199 NW2d 271 (1972), lv den, 388 Mich 791 (1972), People v Reeves, 23 Mich App 183, 188; 178 NW2d 115 (1970). See also Anno: Search & Seizure: Furtive Movement or Gesture as Justifying Police Search, 45 ALR3d 581. The rationale behind this rule was considered in People v Hall, 40 Mich App 329, 335; 198 NW2d 762 (1972), quoting People v Superior Court of Yolo County, 3 Cal 3d 807, 817-818; 487 P2d 449; 91 Cal Rptr 729 (1970):

" 'The difficulty is that from the viewpoint of the observer, an innocent gesture can often be mistaken for a guilty movement. He must not only perceive the gesture accurately, he must also interpret it in accordance with the actor's true intent. But if words are not infrequently ambiguous, gestures are even more so. Many are wholly nonspecific, and can be assigned a meaning only in their context. Yet the observer may view that context quite otherwise from the actor: not only is his vantage point different, he may even have approached the scene with a preconceived notion — consciously or subconsciously — of what gestures he expected to see and what he expected them to mean. The potential for misunderstanding in such a situation is obvious.

" "It is because of this danger that the law requires more than a mere "furtive gesture" to constitute probable cause to search or to arrest. * * * .' "

In People v Nelson Pitts, supra, police officers stopped the defendant's car because it had no license plate light and saw a small prescription bottle in the defendant's hand which he dropped between the seat and door as they approached. A search of the car revealed it to contain heroin. The Court held that the circumstances did not jusitfy the search, stating that the movement by the defendant was not so obviously evasive that the police could infer criminality. The circumstances, said the Court, established no more than mere suspicion.

In the instant case, the furtive gesture consisted of the defendant putting his hand in his pocket and SU floor of the vehicle. Such a gesture would seem to be closely akin to that in Pitts which was found to establish no more than mere suspicion.

This gesture, combined with the suspicion aroused by the tin foil packet, may have been sufficient to establish probable cause. Nevertheless, we refuse to overturn the decision of the lower court for the following reasons. First, we note that the record fails to supply us with an adequate description of the "tin foil packet". We are, therefore, left to speculate as to its bulk and configuration -- whether large enough to hold a sandwich, or perhaps the size of a gum wrapper. Absent such evidence, we have no basis, apart from the officer's naked allegation, for considering the argument that they are so readily identifiable as a means of drug conveyance.

In the same vein, the extent of defendant's "furtive gesture" is not apparent. Defendant either "dropped" of "threw" the packet to the floor of the vehicle. No other circumstances helpful to us are given surrounding the incident. As this Court noted in People v Strong, 77 Mich App 281, 288; 258 NW2d 205 (1977):

" ' Furtive gestures' have been defined as 'obviously evasive actions". People v Nelson-Pitts, 40 Mich App 567, 576; 199 NW2d 271 (1972), People vEvans, 3 Mich App 1, 7; 141 NW2d 668 (1966). An inference of criminality may be drawn from circumstantial evidence only if it follows 'as an impelling certainty'. People v Davenport, 39 Mich App 252, 257; 197 NW2d 521; 56 ALR3d 942 (1972)."

We are not constrained to say that, in light of the record before us, an inference of criminality follows "as an impelling certainty". The similar facts holding of People v Nelson Pitts, supra, supports this conclusion.

Further, we do not reverse a trial court's ruling at a suppression hearing unless that ruling is found to be "clearly erroneous". People v White, 84 Mich App 351, 354; 269 NW2d 598 (1978), People v Ulrich, 83 Mich App 19, 21; 268 NW2d 269 (1978), People v Robertson, 81 Mich App 446, 449; 265 NW2d 365 (1978), People v Terrell, 77 Mich App 676, 679; 259 NW2d 187 (1977), People v Triplettt, supra at 535, People v Stewart, 25 Mich App 204, 206; 181 NW2d 14 (1970), People v Smith, 19 Mich App 359, 367; 172 NW2d 902 (1969). As the question in the present case is a close one, this standard does not mandate reversal of the court below.

Affirmed.

J. H. GILLIS, J. (Dissenting)

At 1:30 a.m. on September 2, 1977, defendant and a companion were observed apparently sleeping in a car parked on the street. The passenger door was open and the dome light was on. As a uniformed officer approached on the passenger side of the car, defendant took a tinfoil packet out of his pocket and dropped it on the floor. From experience, the officer knew that similar packets were often used to transport drugs. The packet was seized and opened, revealing a substance which was later determined to be heroin. Defendant was thereupon arrested.

Following the preliminary examination and bind over, the lower court granted defendant's motion to quash the information. Relying upon the case of People v Falconer, 76 Mich App 367; 256 NW2d 567 (1977), the court held that there was not probable cause to seize the packet.

In Falconer, the defendant was observed on three occasions removing manila coin envelopes from a car and exchanging them for money. The defendant was unaware that he was under police observation at the time. The Court held there was no probable cause to arrest the defendant or search the car, saying:

"There was no testimony that the officer was in possession of any information from any source linking the defendant, any of the persons who approached the defendant, the car, or the locality with prior narcotics involvement. The sole ground of the arrest and search was the officer's suspicion that the manila coin envelopes contained narcotics. Such suspicion does not constitute probable cause for either the arrest of the defendnat or the search of the car." Id. at 369.

In People v Ridgeway, 74 Mich App 306; 253 NW2d 743 (1977), the defendant was stopped for a minor traffic offense. The officers smelled marijuana and observed a tinfoil packet on the floor. In determining that there was probable cause, the Court placed much reliance upon the officers' knowledge that tinfoil packets such as the one in defendant's car often contain narcotics. The Court gave some weight to the fact that the officers smelled marijuana, since it might be inferred that one who smokes marijuana may also be in possession of more dangerous drugs. However, it is readily apparent that this was not the controlling factor in the Court's decision. As the Court noted:

"We are not overly impressed by that inference, but it may be entitled to some weight."

In the instant case, like in Ridgeway, the officer testified that he had seen packets similar to the one observed and that in his experience packets of that type ordinarily contain narcotics or other controlled substances.

In addition, defendant's actions can certainly be characterized as "suspicious." Defendnat was partially lying down in the front seat of the car. A marked police car stopped next to the automobile. As a uniformed officer walked around the rear of the car, defendant got up. As the officer approached the passenger door, defendant reached into his pocket, removed the packet, and threw it to the floor. I do not believe it is unreasonable to infer from these circumstances that defendant was attempting to get rid of the possession of incriminating material.

An obviously evasive action by a person who is aware that he is being observed by the police is one factor to be considered in the probable cause formula. People v Nelson Pitts, 40 Mich App 567, 576; 191 NW2d 271 (1972). While a "furtive gesture" standing alone does not create probable cause, Id., in the instant case the defendant's actions, when coupled with the officer's knowledge from prior experience, was sufficient to justify the seizure of the packet.

I would reverse.

APPENDIX B

ORDER OF THE MICHIGAN SUPREME COURT

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the City of Lansing, on the 28th day of September in the year of our Lord one thousand nine hundred and seventy-nine.

Present: The Honorable Mary S. Coleman, Chief Justice, Thomas Giles Kavanagh, G. Mennen Williams, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., Associate Justices.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the question presented should be reviewed by this Court.

State of Michigan — ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 28th day of September in the year of our Lord one thousand nine hundred and seventy-nine.

/s/ Corbin Davis
Deputy Clerk